Filed 4/9/19 Conservatorship of C.D. CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

Conservatorship of the Person and Estate of C.D.	C086894
KAREN LARSEN, as Public Guardian, etc., Petitioner and Respondent, v. C.D., Objector and Appellant.	(Super. Ct. No. LPSQ17-057)

C.D., a conservatee under the Lanterman-Petris-Short Act (LPS) (Welf. & Inst. Code, § 5000 et seq.),[1] appeals the finding she is gravely disabled as a result of a mental disorder and is unable to provide for her basic personal needs of food, shelter, or clothing. She claims the trial court prejudicially erred in instructing the jury she would be

[1] Undesignated statutory references are to the Welfare and Institutions Code.

immediately discharged if it found she was not gravely disabled.[2] Trial counsel consented to the trial court's giving this instruction. Accordingly, the claim is forfeited on appeal. Anticipating this conclusion, C.D. contends this consent was ineffective assistance of counsel. We find no prejudicial error and affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

During C.D.'s third psychiatric hospitalization in 2017, the Yolo County Public Guardian's office received a referral to investigate a conservatorship for C.D. C.D. was temporarily conserved in December 2017. In February 2018, the facility reported she had not showered for weeks, was refusing to launder her clothes, and her clothes were blood stained from her menstrual cycle. The facility was concerned this lack of hygiene represented a health risk to C.D. and could result in skin problems.

C.D. was diagnosed with schizoaffective disorder. She began exhibiting symptoms when she was about 20 years old. At times, C.D. believed she was being poisoned and would refuse to eat. As a result of her thought disorders she would also refuse to shower and neglect her personal hygiene. At one point C.D.'s mother purchased a condominium for her. The mother had the water bills sent to herself to ensure payment. When the water bills were sent to C.D., she did not pay them, the water was cut off, yet she continued to use the toilet and live in the home without water. Alison Steffensen, M.D., testified C.D.'s mental illness had "destroyed her ability to make plans and to care for herself."

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[2] In her opening brief, C.D. also contends the trial court erred in failing to determine the least restrictive placement for her. The county filed a request for judicial notice, attaching a subsequent amended judgment and order, which addressed this claim. In her reply brief, C.D. acknowledges the January 10, 2019 amended judgment and order "adequately address[] this error." We grant the request for judicial notice. Accordingly, there is no further need to address this claim on appeal.

Mental Health Specialist Carmel Stewart had been working with C.D. for about five years. She had attempted to help C.D. with managing her home, receiving psychiatric and health services, and getting medication. C.D. regularly refused support, including firing in-home support service providers. C.D. was not medication compliant.

C.D. had been living at the Homestead Co-op Apartments, which is supportive housing specifically for mentally ill adults with staff assisting residents in staying stable. Although they had separate apartments, she would only live in her boyfriend's apartment. He handled most, if not all, of the responsibilities of daily living, including cleaning the apartment, doing laundry, grocery shopping, and cooking. He was no longer willing or able to care for her. Despite his help, C.D. refused to take medication, would not change clothing, and would not bathe. Because C.D. was not participating in mental health services, and was not cooking or cleaning for herself, she was going to have to leave Homestead. Stewart had found board and care housing that was a good fit for C.D., but despite being informed she was going to have to leave Homestead, C.D. refused to interview for the housing. She did not have a plan for finding housing and was not willing to work with Stewart. Stewart believed if C.D. were homeless, she would not be able to provide for herself because of her disorganized thinking and inability to plan. The services offered through the county mental health programs to assist and support mentally ill adults in the community were insufficient to meet C.D.'s needs.

C.D. has been prescribed medication for her schizoaffective disorder. C.D. does not believe she has schizoaffective disorder and does not believe she needs medication. Because of her lack of insight into her mental illness, she does not willingly take her medication. Medication is critical to control the symptoms of the disorder. Without conservatorship oversight, C.D. was not medication compliant. Even while in the psychiatric hospital, she had to be forced and prompted to take the medications. Dr. Steffensen believed C.D. would not take any medication at all if she were on her own.

C.D.'s repeated psychiatric hospitalizations were evidence of the degree of decompensation and inability to care for herself when not medicated. Unmedicated, C.D.'s symptoms would return, she would stop showering, stop changing clothes, and would not have anywhere to live. Dr. Steffensen concluded C.D. could not live in an apartment on her own, and would not be able to obtain housing, including getting into a homeless shelter. Dr. Steffensen testified if C.D. walked out of the courtroom "today" she would not be able to take care of herself.

C.D. testified if she were not conserved, she would return to her apartment. She stated she had a section 8 voucher, social security, and over $50,000 inherited from her grandparents. She acknowledged she did not yet have the inheritance from her grandparents, but claimed it was owed to her.

A jury found C.D. presently gravely disabled due to a mental disorder. The trial court granted the petition and issued letters of conservatorship appointing, as conservator, Karen Larsen, Yolo County Public Guardian.

DISCUSSION

C.D. contends the trial court prejudicially erred in instructing the jury that if it did not find her gravely disabled, she would be immediately discharged. She argues the jury should have been instructed not to consider the consequences of its verdict. Recognizing her trial counsel explicitly agreed to this instruction, she also contends if we find the issue forfeited, she received ineffective assistance of counsel.

1.0 Background

Approximately one hour into deliberations, the jury sent a note asking, "Should [w]e take into consideration whether or not psychiatric hospital has made the determination on her status? [¶] In other words, would she be discharged if we decide she is not disabled?" Outside the presence of the jury, both attorneys said, "Yes," and

agreed she would be discharged. The attorneys also agreed the jury should not consider whether the psychiatric hospital had made a determination on C.D.'s status. The parties agreed the jury could consider the doctor's testimony, not the hospital's determination; and, that C.D. would be discharged if the jury found she was not gravely disabled. The court then asked, "So at this point should we bring them in and just let [the jurors] know that?" Both attorneys responded, "Sure."

The trial court then instructed the jury, "The second question is, in other words, would she be discharged if we decide she is not disabled? And the answer to that is if you determine that she is gravely—she is not gravely disabled, then she would be discharged." A juror asked if the discharge would be immediate. County counsel answered, "Yes." The trial court stated, "She would be discharged." County counsel again said, "Immediately." The trial court then also stated, "Immediately." Defense counsel did not object. Approximately 30 minutes later, the jury had reached a verdict that C.D. was gravely disabled due to a mental disorder.

2.0 Analysis

C.D. contends that the trial court's response to the jury's inquiry, that she would be discharged if the jury found she was not presently gravely disabled, violated her due process rights. A party "may forfeit an objection to the court's response to a jury inquiry through counsel's consent, or invitation or tacit approval of, that response." (*People v. Ross* (2007) 155 Cal.App.4th 1033, 1048-1049.) Trial counsel agreed C.D. would be discharged if the jury found she was not presently gravely disabled, and agreed the jury should be advised of that consequence. When the jury then asked if her discharge would be immediate, and the trial court stated it would, trial counsel remained silent. Based on trial counsel's agreement on the appropriate response to the jury's question, and his silence when the response went further, we find this claim is forfeited. (*People v. Hughes* (2002) 27 Cal.4th 287, 402, citing *People v. Rodrigues* (1994) 8 Cal.4th 1060, 1193.)

C.D. argues if we find the issue forfeited by counsel's agreement, she received ineffective assistance of counsel. To prevail on a claim of ineffective assistance of counsel, C.D. must show (1) trial counsel's performance fell below an objective standard of reasonableness under prevailing professional norms, and (2) the deficient performance prejudiced her. (*Strickland v. Washington* (1984) 466 U.S. 668, 688, 692 [80 L.Ed.2d 674, 693, 696]; *Conservatorship of David L.* (2008) 164 Cal.App.4th 701, 710 [statutory and due process rights entitle proposed LPS conservatee to effective assistance of counsel].) Prejudice is shown when there is a reasonable probability that, but for counsel's deficient performance, the result of the proceeding would have been different. (*People v. Williams* (1997) 16 Cal.4th 153, 215.)

Instructions, argument, and evidence about the consequences of the verdict are improper in civil commitment proceedings. (*Conservatorship of P.D.* (2018) 21 Cal.App.5th 1163, 1167-1168; see *People v. Kipp* (1986) 187 Cal.App.3d 748, 751 [not guilty by reason of insanity civil commitment]; *People v. Collins* (1992) 10 Cal.App.4th 690, 696 [mentally disordered offender civil commitment]; *People v. Rains* (1999) 75 Cal.App.4th 1165, 1167 [sexually violent predator civil commitment].) "[I]nformation about the consequences of conservatorship for [C.D.] was irrelevant to the only question before [the] jury: whether, as a result of a mental disorder, [s]he is unable to provide for [her] basic personal needs for food, clothing, or shelter. (§ 5008, subd. (h)(1)(A).)" (*Conservatorship of P.D.*, *supra*, 21 Cal.App.5th at p. 1168.) We can discern no reason why trial counsel would not have objected to the substance of trial court's answer to the jury's question. Accordingly, counsel's performance was deficient.

Nonetheless, even in the absence of this instructional error, the result of the proceeding would not have been different. (See *People v. Kipp*, *supra*, 187 Cal.App.3d at pp. 751-752.) C.D. had a diagnosed mental disorder. The evidence was consistent and unrebutted that C.D. could not handle the responsibilities attendant to obtaining and

maintaining housing, doing laundry, grocery shopping, and cooking. Her boyfriend handled those tasks while she lived in his apartment. But, he was unable to continue to assist her and she could no longer live with him. She was no longer allowed at the Homestead apartment complex, and she refused to work with the social worker to find alternative housing or develop a plan for housing. She fired in-home support, and county services were insufficient for her needs. Her disorganized thinking and inability to plan would preclude her from providing for herself if she became homeless. She lacked insight into her mental illness and consistently refused to take her medication. Unmedicated, she had to be hospitalized repeatedly as she was unable to care for herself. She was unable to live on her own or obtain housing. In light of the evidence, it is not reasonably probable that the result of the proceeding would have been different in the absence of the instructional error.

DISPOSITION

The order granting the conservatorship is affirmed.

BUTZ, J.

We concur:

RAYE, P. J.

BLEASE, J.